

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ASARCO LLC, a Delaware corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:11-CV-00864-JAR
	)	
NL INDUSTRIES, INC., et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Defendant/Counterclaimant Delta Asphalt, Inc.'s Motion for Leave to File Memorandum in Opposition to Plaintiff's Supplemental Authority Regarding Summary Judgment Briefing. [ECF No. 134] The motion is fully briefed and ready for disposition.

**Background**

On December 7, 2012, Asarco filed its Memorandum of Supplemental Authority Regarding Summary Judgment Briefing (Doc. No. 132) directing the Court's attention to two recent decisions issued after briefing was completed for Defendants' pending summary judgment motions.<sup>1</sup> (Doc. No. 132.) Asarco requested these decisions be considered as supplemental authority against the judicial estoppel and statute of limitations arguments made by Defendants.

On December 18, 2012, Delta Asphalt filed the instant motion seeking leave to file a memorandum in opposition.<sup>2</sup> Delta Asphalt does not object to Asarco's submission of

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<sup>1</sup> ASARCO LLC v. HECLA Mining Co., E.D. of Washington, No. CV-12-0381-LRS (Order Denying Defendant Callahan's Motion to Dismiss) and ASARCO LLC v. Atlantic Richfield Co., et al., D. Montana, No. 12-53-H-DLC (Order Denying Defendant American Chemet's Motion to Dismiss).

<sup>2</sup> On December 14, 2012, Union Pacific filed its Response to Plaintiff's Memorandum of Supplemental Authority. (Doc. No. 133)

supplemental authority provided the Court grants it leave to respond. Asarco opposes Delta Asphalt's motion for leave on the grounds that it was not timely filed within seven days under Local Rule 7-4.01(B).


### **Discussion**

This Court's Local Rule 7-4.01(C) specifically states that after a memorandum in opposition to a motion and a reply memorandum have been filed, "additional memoranda may be filed by either party only with leave of Court." E.D.Mo. L.R. 7-4.01(C). Plaintiff's Memorandum of Supplemental Authority constitutes such an additional memorandum because it does not simply provide notice of supplemental authority. Instead, it requests the Court consider the attached orders as supplemental authority against the judicial estoppel and statute of limitations arguments made by Defendants. Asarco should have filed a motion for leave along with its proposed notice of supplemental authority. See, e.g., In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation, 2009 WL 1576928, at \*4 (E.D.Mo. Jun. 3, 2009), *rev'd on other grounds by In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, 621 F.3d 781 (8th Cir. 2010). The Court will nevertheless consider these cases, and ascertain their relevance to the pending Motions, after granting Delta Asphalt an opportunity to respond.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant/Counterclaimant Delta Asphalt, Inc.'s Motion for Leave to File Memorandum in Opposition to Plaintiff's Supplemental Authority Regarding Summary Judgment Briefing [134] is **GRANTED**. No further briefing will be allowed.

Dated this 27th day of December, 2012.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE